IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

Crl.MC.No. 4182 of 2002

CC.121/2000 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

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PETITIONER: ACCUSED NO.6

M/S.SREEDEVI AGENCIES,
V.P.III/326, MACHEL, MALAYINKEEZH,
THIRUVANANTHAPURAM-695 571,
REPRESENTED BY ITS MANAGING PARTNER,
MR.K.P.RADHAKRISHNAN NAIR.

BY ADV. SRI.N.A.MURALEEDHARAN
SRI.M.T.SURESHKUMAR

RESPONDENTS: COMPLAINANT AND STATE

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1. THE FOOD INSPECTOR, COCHIN CIRCLE,
COCHIN.

2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PRLOSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.SUDHA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

A.K.BASHEER, J.

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Crl.M.C.No.4182 OF 2002

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Dated this the 15th day of November 2007

ORDER

Petitioner is stated to be a partnership firm engaged in the business of stocking and distribution of food products. This petition under Section 482 of the Code of Criminal Procedure has been filed seeking to quash the proceedings initiated against the petitioner in C.C.121/00 on the file of the Judicial Magistrate of First Class-I, Kochi.

2. The above was taken on file by the learned Magistrate pursuant to a complaint filed by the Food Inspector, Cochin Circle under Section 2(ia)(a)(m), 7(i), 16(1)(a)(i) of the Prevention of Food Adulteration Act 1954 and Rule 5 Appendix B.A.11.02 and Rule 50(1). The complaint was initially filed against the salesman of the society, the Secretary of the society as well as the dealer from whom the food article was purchased by the society.

3. It appears that before the trial of the case had commenced, accused No.4 (the dealer) had filed an application to implead the distributor as accused No.5 from whom he had purchased the food article (skimmed milk). Accused No.5 after his

impleadment, filed an application to implead the present petitioner. According to accused no.5, the petitioner herein was the stockist from whom he had purchased the article. Petitioner in turn filed a petition to implead the manufacturer namely M/S Brooke Bond Lipton India Limited as accused No.7.

4. It is on record that M/S Brooke Bond Lipton India Limited had filed Crl.M.C.No. 1273 of 2002 before this court seeking to quash the proceedings initiated against it. The said Crl.M.C. was allowed by this court by order dated June 22, 2004 relying on a decision of their Lordship of the Supreme Court in **M/S Omprakash Shivaprakash V. Kuriakose (1999 (3) KLT 861)**.

5. It is contended by the petitioner that the court below was not justified in impleading the petitioner as a co-accused in the case even before the trial had commenced. Learned counsel places heavy reliance on the decision of the Supreme Court in **Omprakash Shivaprakash's case (supra)**. A perusal of the proceedings of the trial court, a copy of which is on record as Annexure-C, unambiguously shows that the petitioner was impleaded even before the trial of the case had commenced. Therefore, the decision of the apex court in **Omprakash**

Shivaprakash's case (supra) squarely applies in this case also as held by this court in Crl.M.C.1273/02 which was filed by accused No.5 in the very same case.

6. Though learned Government Pleader has taken up the contention that the petitioner is not entitled to get protection of Section 20A of the Act in as much as he is neither a manufacturer, distributor nor a dealer as contemplated under the above section, I am not impressed with the said contention. Even assuming the petitioner is a “stockist” and not a distributor or dealer as contended by the learned Government Pleader, it cannot be assumed that the role of the “stockist” is stocking the wares only. It cannot be assumed that his duty as stockist ends in stocking and not in distribution at all.

In the above facts and circumstances, Crl.M.C. is allowed. The proceedings initiated against the petitioner in C.C.121/01 on the file of the Judicial First Magistrate of First Class-I, Kochi are quashed.

(A.K.BASHEER, JUDGE)

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